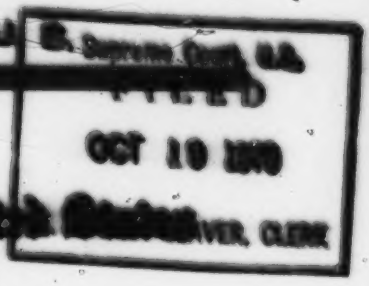
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 8721

RAILWAY LABOR EXECUTIVES' ASSOCIATION, FRANK CARTHY, ET AL., *Petitioners*,

v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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v.

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioners Railway Labor Executives' Association, Brotherhood of Maintenance of Way Employes, Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employes, United Transportation Union (the Employees or the Association),[1] Frank Carthy and other individuals sim-

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[1] The Association is an unincorporated voluntary association composed of the chief executive officers of most of the standard railway labor organizations representing employees on the Railway and most other railroads in the country. See *RLEA v. United States*, 355 U.S. 141. Throughout the proceedings below and until oral argument to the Court of Appeals, the chief executives of the three individually named railway labor organizations were members of the Association and thereby parties to this action. Before oral argument they withdrew from membership in the Association. They appeared jointly with the Association thereafter in the Court below and they appear jointly with the Association as petitioners to this Court.

ilarly employed[1] by the respondent, The Atchison, Topeka & Santa Fe Railway Company (Santa Fe or the railroad), respectfully pray that a writ of certiorari issue to review the Judgment and Opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on June 23, 1970.

OPINIONS BELOW

The opinion of the Court of Appeals, not yet reported, appears in Appendix A hereto. The opinion of the District Court appears in Appendix B hereto.

JURISDICTION

The judgment (Appendix A) of the Court of Appeals was filed on June 23, 1970. A petition for rehearing timely filed was denied on July 21, 1970 (Appendix C), and this petition for certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

Whether an action brought by railway employees to recover for damages resulting from a partial termination of rail operations by their employer in violation of a Federal statute may properly be denominated a "minor labor dispute" so as to require resort for relief by claimants to the National Railroad Adjustment Board (Adjustment Board).

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[1] The action before the U. S. District Court for the Central District of California was initiated by Carthy and other employees of the Santa Fe similarly situated as members of the class for whom the action was brought. RLEA subsequently was permitted to intervene, 29 U.S.C.A. 17(11).

STATUTORY PROVISIONS INVOLVED

The action involves provisions of Sections 8, 9, and 13a(1) of the Interstate Commerce Act as amended, 49 U.S.C. 8, 9, and 13a(1), and Section 3, First (i) of the Railway Labor Act, 45 U.S.C. 153, First (i). The provisions of these statutes are set forth in Appendix D hereto.

STATEMENT OF THE CASE

Jurisdiction of the District Court was invoked on November 6, 1967, because of a question arising under a law relating to commerce, the Interstate Commerce Act.

Santa Fe, desiring to discontinue operations of its passenger trains numbered 3 and 4, operating daily (in various sections) between Kansas City, Missouri, and Gallup, New Mexico, and passenger trains numbered 7 and 8, operating daily (in various sections) between Chicago, Illinois, and Los Angeles, California, availed itself of the provisions of section 13a(1) of the Interstate Commerce Act (I.C. Act) and on October 10, 1967, filed and published notices as required by section 13a(1), that upon expiration of the statutory required notice period of thirty (30) days, or at 12:01 a.m., November 9, 1967, it would discontinue operations of the involved trains. On October 19, and 20, 1967, or some twenty (20) days prior to the expiration of the required notice period, Santa Fe summarily discontinued the operations of the involved trains at points along their described routes. The efforts of the Association to have the Commission require restoration of the service were unavailing even though the Commission recognized that Santa Fe had violated the law.

The Commission gave as its reason that the discontinuance of the involved trains by Santa Fe prior

to the expiration of the 30-day period was a breach of its own notice and of the provisions of Section 13a (1) and, "therefore vitiates our jurisdiction in this matter." The Commission thereupon ordered the "dismissal" of notice of discontinuance filed by Santa Fe.[3]

On November 6, 1967, employees of the Santa Fe on their behalf and on behalf of other employees similarly situated filed a complaint with the District Court seeking an order to require the Santa Fe to reinstate service of the involved trains and to compensate for damages suffered by the employees because of the unlawful discontinuances. The District Court refused to issue an order to require restoration of the operations of the trains, and the action continued seeking damages alone. The Association was thereafter permitted to intervene as a party plaintiff.

The District Court entered its findings of fact and conclusions of law (Appendix B) and judgment on

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[3] Approximately 3 weeks after the filing of the complaint the Committee on Commerce of the U. S. Senate in Report No. 824 to accompany Senate Bill S. 2711 described the purpose of the bill as "being designed to close a jurisdictional loophole in Section 13a(1) created as a result of a recent ICC decision involving the removal of certain Santa Fe Railway Co. interstate passenger service." The Senate Committee on Commerce recognized the uniqueness of the action by the Santa Fe and commented:

> "In all of the proceedings under section 13a(1) since its 1958 enactment, with one exception, the public was given 30 days' notice before passenger train service was discontinued. The plain language of section 13a(1) guarantees to the public 30 days' notice before train service changes by a carrier availing itself of the provisions of this section. The one exception since 1958 is the recent action by the Santa Fe Railway Co. in removing four of its passenger trains from service prior to the expiration of the statutory 30 days' period."

January 14, 1969, dismissing the action, holding that the plaintiffs had no legal standing to assert violations of Section 13a(1), and that any relief available to the plaintiffs would be by recourse to the National Railroad Adjustment Board.[4]

On June 23, 1970, the Court of Appeals issued its opinion Appendix A and "without determining the controversy",—the lawfulness of Santa Fe's action in discontinuing the involved trains—affirmed the judgment of the District Court that the controversy between the Santa Fe and its employees was a "labor dispute" and "properly cognizable" by the Adjustment Board.

REASONS FOR GRANTING WRIT

1. The Decision Below Is in Conflict With Prior Decisions of Other Courts of Appeal and This Court as to the Jurisdiction of the National Railroad Adjustment Board.

The decision of the Court of Appeals is predicated upon the erroneous premise that the relationship between the parties, and/or the nature of the relief sought, and not the issues framed by the pleadings, determines the forum in which the validity of a claim is to be adjudicated. Finding the dispute to involve claims for money damages by employees against their railroad employer with whom they were "linked by bargaining agreements", the Court below classified the controversy a "labor dispute", thus enabling it to avoid adjudication of the issue presented by relying

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[4] The District Court ruled that the benefits of Section 13a(1) were "limited to the traveling and shipping public", and did not "enure to the benefit of the employees of railroad carriers", and that the claims of plaintiffs represented a "grievance" arising out of the employment relationship between Santa Fe and its employees, "exclusively referable to the National Railroad Adjustment Board under the provisions of the Railway Labor Act . . . ."

upon the doctrine that the Railway Labor Act, 45 U.S.C. 151 et seq., furnishes the exclusive procedures for the settlement of labor disputes. *Elgin J. & E. Ry. Co.* v. *Burley*, 325 U.S. 711; *Bro. R. Trainmen* v. *Chicago River & Indiana R. Co.*, 353 U.S. 30; *Union Pacific* v. *Price*, 360 U.S. 601; *Bro. Loco. Eng.* v. *L&N R. Co.*, 373 U.S. 33.

Applying the principles of the above familiar cases describing the dichotomy for the resolution of labor disputes, the Court reasoned that because the dispute was not one in which the employees sought to obtain *new* contract rights or to change *old* contract rights so as to present a "major" labor dispute for handling by the National Mediation Board, the controversy must be a "minor" labor dispute cognizable solely by the Adjustment Board.

The decision of the lower Court is unarguably correct *if* the instant dispute is properly classed as a "minor" dispute within the meaning of that term in railway labor adjudications. We do not dispute that the provisions of Section 3 of the Railway Labor Act, 45 U.S.C. 153, require minor disputes to be handled in the usual manner on the property of the railroad, and provide for final adjudication by the appropriate division of the Adjustment Board.

We *do* dispute that the controversy here involved is properly denominated a "minor" dispute so as to require or even permit its settlement by the Adjustment Board.

Perusal of the judicial interpretations of the Railway Labor Act will disclose that not *all* disputes that arise between a railroad and its employees are required

to be referred to the Adjustment Board. We have referred earlier herein to the differing procedures providing for the resolution of "major" disputes involving the negotiation of new contracts or changes in existing agreements.

The continued vitality of *Slocum*, *Koppal*, and *Walker*[5] is recognition that a grievance asserting an unlawful discharge is not "exclusively referable" to the Adjustment Board, and a state court action for damages for breach of contract may be brought except where state law requires prior exhaustion of administrative remedies. *Slagley* v. *Illinois Central*, (7th Cir. 1968), 397 F.2d 546; *Rosen* v. *Eastern A. L., Inc.*, (5th Cir. 1968), 400 F.2d 462, cert. den. 394 U.S. 959; reh. den. 395 U.S. 917.

Jurisdiction otherwise exists in the Federal District Courts separate from sections 1331 and 1337 of the Judicial Code, 28 U.S.C. 1331, 1337 to undertake settlement of other types of "labor disputes" between employees and their employers subject to the Railway Labor Act. Such disputes may be where a veteran sues his air carrier employer under the provisions of the Universal Military Training and Service Act, 50 U.S.C. App. Sec. 459, to obtain seniority rights provided in his collective bargaining agreement,[6] or where Pullman porters (as the Employees here did) sue for damages under Sections 8 and 9 of the Interstate Commerce Act, 49 U.S.C. 8 & 9, because of a

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[5] *Slocum* v. *Delaware L. & W. R. Co.*, 339 U.S. 239; *Transcontinental & Western Air., Inc.* v. *Koppal*, 345 U.S. 653; *Walker* v. *Southern Ry. Co.*, 385 U.S. 196.

[6] *Moe* v. *Eastern Air Lines, Inc.*, (5th Cir. 1957) 246 F.2d 215.

violation by their employer of provisions of the Interstate Commerce Act.[7]

These cases illustrate that the nature of the dispute, not the relationship of the parties or the remedy sought, determines the proper tribunal for settlement of a labor dispute. "Subject matter jurisdiction seldom depends on the relief sought. The caboose does not run the train."[8]

The failure of the Court below to perceive the marked difference between the issue here presented, and the issues presented in the familiar "contract-dispute" line of cases—the "minor" disputes referable to the Adjustment Board—led it to its erroneous judgment. The instant case is shown not to arise out of the familiar contract-dispute pattern, but to have resulted from a violation of a Federal statute.

The decision of the Court of Appeals in *United Workers of S.I.U.* v. *Galveston Wharves,* (5th Cir. 1968), 400 F.2d 320, cert. den., 395 U.S. 905, which is in direct conflict with the decision of the Court below, explains the significant differences between the familiar "contract-dispute" cases, or "minor" disputes as to which procedures of the Railway Labor Act including resort to the Adjustment Board are mandatory, and a dispute such as that presented here.

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[7] *Brogan et al.* v. *The Pennsylvania R. Co., et al.* (ND Ill. 1962), 211 F.Supp. 881, 886 (18 & 19); *See Louisville & Nashville Ry. Co.* v. *Scott,* 219 U.S. 186, 209; *Williams* v. *Jacksonville Terminal Co.,* 315 U.S. 386, 408; *Arnold* v. *L&N Ry. Co.,* (MD Tenn. 1960) 180 F.Supp. 429, 434, affirmed *sub nom. Batts* v. *L&N Ry. Co.,* (6th Cir. 1963) 316 F.2d 22.

[8] *Mungin* v. *Florida E. Coast R. Co.,* (5th Cir. 1969) 416 F.2d 1169, 1175.

In *Galveston Wharves* the Court in reversing a District Court ruling that a claim by railway employees for backpay as damages resulting from violation by their employer of a federal statute was "properly cognizable" by the Adjustment Board, held that the District Court alone possessed jurisdiction to entertain the action and determine the amount of damages to be awarded. The Court held (p. 327):

> [t]he employees here do *not* claim backpay for a breach of contract. Their claim arises out of a violation of the federal statute. The contract-dispute cases therefore are not relevant (emphasis by the Court).

The Court specifically held that there is no traditional "minor" dispute involved where damages in the nature of backpay are sought by railway employees for violation of a Federal statute by their employer—*even where the Federal statute violated by the employer was the Railway Labor Act.* The Court ruled (p. 327):

> [a] minor dispute is not involved. This is not a grievance dispute, nor a matter of interpretation or application of a collective bargaining agreement. These are the issues over which the adjustment board has exclusive jurisdiction under the terms of the statute.[9]

The decision in *Mungin* v. *Florida East Coast Ry. Co.* (5th Cir. 1969), 416 F.2d 1169, by the same Court

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[9] See *NLRB* v. *International L. Assoc.*, (4th Cir. 1964), 332 F.2d 992, 995, where the court in reliance on the definition of a "labor dispute" as set forth in the National Labor Relations Act, 29 U.S.C. 152(g) [constituting a paraphrasis of a similar definition in the Norris-LaGuardia Act, 29 U.S.C. 133(c)], held that the dispute before it was not a controversy grounded in "terms and conditions" of employment and as such not a "labor dispute": as the "law defines it."

adds further support for the distinctions expressed in *Galveston Wharves*. *Mungin* and other employees of the Florida East Coast had sought backpay as damages incurred when they lost their jobs because of the unilateral unlawful action of their employer in changing the terms and working conditions of their employment in violation of Section 6 of the Railway Labor Act, 45 U.S.C. 156.

The Court commented (p. 1177):

> In *Galveston Wharves III* we reversed the Trial Court's third holding that, in effect, the back wages portion of the relief was a pure contract claim which called for Railway Adjustment Board processing . . . . We held that the Federal Court "has authority to require back pay as a sanction for the Carrier having violated Section 6" of the Act. . . .

The Court below committed the same error by its analysis that the claim of the Employees here was for damages resulting from a violation of their bargaining agreement, rather than because of damages resulting from their employer's violation of the I.C. Act.

Most of the authorities relied upon by the Court below relate to the principle, accepted here, that a "minor" dispute as that type of controversy is established in railway labor law is referable to the Adjustment Board. *Missouri-Kansas-Texas RR.* v. *Bro. R. Trainmen* (5th Cir. 1965), 342 F.2d 298, relied upon by the Court below is of doubtful relevance in view of the subsequent decisions in *Galveston Wharves* and *Mungin* from the same Court, and, in any event, is clearly distinguishable because it did not involve a violation of a federal statute.

2. The Decision of the Court Below Unlawfully Deprives Railway Employees of Reasonable Access to the Courts for Vindication of Important Rights Secured to Them by Federal Statutes.

The right of a rail carrier unilaterally to change the working conditions of its employees by the abandonment of rail lines, the consolidation of facilities, or the discontinuance of passenger train operations, is permitted under Federal law, when the procedures provided by the I.C. Act are resorted and adhered to by rail carriers seeking to consummate such transactions.

Conversely, there is no right given a rail carrier unilaterally to undertake to so modify or change its operations unless the requirements of applicable Federal statutes are met, be they the requirements of Section 6 of the Railway Labor Act,[10] 45 U.S.C. 156, Sections 1(18)-(22) of the I.C. Act, 49 U.S.C. 1(18)-(22), Section 5, or Section 13(a)1 of the same Act, 49 U.S.C. 5 and 13(a)1.[11]

These provisions of the I.C. Act prohibiting such transactions unless there is strict adherence to statutorially prescribed procedures, directly provide for the stability of employment of railroad workers.[12]

The decision of the Court below will deprive a railway employee of the opportunity to obtain *judicial* inquiry into the lawfulness of acts by his employer which are contended to fail to comply with the re-

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[10] *United Indust. Wkrs. of S. I. U.* v. *Galveston Wharves*, (5th Cir. 1965), 351 F.2d 183; *Mungin* v. *Florida East Coast*, *supra*.

[11] Note 7, *supra*.

[12] See *United States* v. *Lowden*, 308 U.S. 225; *Interstate Com-Comm.* v. *RLEA*, 315 U.S. 373, 377; *RLEA* v. *United States*, 339 U.S. 142.

quirements of such federal statutes contrary to the provisions of Sections 8 & 9 of the I.C. Act, 49 U.S.C. 8 and 9, and Section 1331, and 1337 of the Judicial Code, 28 U.S.C. 1331 and 1337.

As their legislative history shows,[13] the 1966 amendments to the Railway Labor Act[14] were intended by Congress to eliminate any remaining doubt as to the finality of decisions by the Adjustment Board in the settlement of minor disputes.[15] The Act as amended clearly shows that the findings and orders of the Adjustment Board in the resolution of minor disputes "shall be conclusive on the parties."

The Court below was not disturbed by the fact that the Adjustment Board would be required to decide whether Santa Fe had violated a provision of the Interstate Commerce Act, because it "anticipated" that the Board would interpret much more: "past bargaining history, current industry practices, and the effect of the ruling upon future bargaining in the industry as a whole."[16]

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[13] Senate Report No. 1201, 89th Cong., 2nd Sess. 1966, Code, Cong. and Administrative News p. 2287.

[14] Public Law 456, 89th Cong., 80 Stat. 208.

[15] The restricted measure of judicial review of the lawfulness of a Board award is set forth in Section 3, First (p) and (q) of the Act, 45 U.S.C. 153, First (p) and (q). See *Gunther* v. *San Diego & Arizona E. R. Co.*, 382 U.S. 257.

[16] It is difficult to understand how "interpretations" of this nature by any tribunal have any relevancy to a decision of the clear-cut question presented: Whether Santa Fe complied with the 30-day notice provisions of Section 13a(1)?

Whatever expertise the Adjustment Board may possess with respect to the settlement of disputes arising out of the interpretation and application of the provisions of collective bargaining agreements, its members are not equally equipped to undertake the judicial determination whether a federal statute has been violated. The delegation of such authority to the Adjustment Board is incomprehensible when as shown the Board's decision thereon would not be subject to judicial review.

The decision of the Court below will therefore deprive railway employees of the right to obtain judicial determination of the lawfulness of the actions by their employers contended to be in violation of specific Federal statutes regulating the operations of their employers and thus the conditions of their employment. Clearly, the issue presented is of substantial importance in railway labor relations.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Ninth Circuit.

Respectfully submitted,

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